

**In the United States District Court
For the Southern District of Texas
Houston Division**

**Lewis Brisbois Bisgaard & Smith,
LLP,**
Plaintiff,
v.
**Michael Joseph Bitgood a/k/a “Michael
Easton,” *et al.***
Defendants.

Civil Action No. 4:22-cv-3279

Jury Demanded

**PLAINTIFF’S OPPOSED MOTION FOR LEAVE TO FILE RESPONSE TO
DEFENDANT BRADLEY BEERS’ MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Lewis Brisbois Bisgaard & Smith, LLP (“LBBS”) moves the Court to extend, by 5 days, the deadline for LBBS to file a response to Defendant Bradley Beers’ motion for summary judgment. [Doc. 185]. LBBS tenders a proposed response (the “Response”) in opposition to Mr. Beers’ motion for summary judgment along with a proposed order.

CERTIFICATE OF CONFERENCE

1. Mr. Fisher conferred with Wallace Dunwoody, counsel for Defendant Bradley Beers, asking for additional time to file this response. Mr. Dunwoody stated that he did not have authority to grant the request and that he was extremely busy but would try to contact Mr. Beers and would get back to the undersigned. As of the filing of this motion, the undersigned has not heard from Mr. Dunwoody and thus marks this motion opposed.

ARGUMENT AND AUTHORITY

2. On September 23, 2022, Plaintiff sued Michael Joseph Bitgood a/k/a Michael Easton, Susan C. Norman, Bradley B. Beers (collectively with Bitgood and Ms. Norman, “Defendants”), Richard P. Jones, and a recently formed Texas entity known as “Lewis Brisbois Bisgaard & Smith, LLP” for trademark and trade name infringement, unfair competition in violation of the Trademark Act of 1946, 15 U.S.C. §1051, *et seq.*, as amended (the “Lanham Act”), and related claims arising

under Texas law. [Doc. 1].

3. On October 7, 2022, the Court granted Plaintiff a temporary restraining order. [Doc. 14].

4. On February 16, 2023, the Court granted Plaintiff a preliminary injunction. [Doc. 124].

5. Plaintiff filed a motion for summary judgment on September 29, 2023. [Doc. 183]. Mr. Beers filed a motion for summary judgment on October 5, 2023. [Doc. 185]. The Court has granted numerous extensions for all parties to respond to each other's motions. [Docs. 189, 191, 193, 199, & 217].

6. On November 6, 2023, the Court ordered Mr. Beers to answer certain questions he (Mr. Beers) declined to answer at his prior deposition. [Minute Entry 11/06/2023]. Plaintiff took Mr. Beers' second deposition on December 7, 2023, and received the transcript from that deposition on December 11, 2023. Excerpts from the December 7, 2023 deposition are attached as Exhibit 6 to the Response Plaintiff seeks leave to file.

7. The undersigned assumed that the deadline for filing this Response (to Mr. Beers' motion for summary judgment was also extended). However, the last extension for Plaintiff's Response to Mr. Beers' motion was December 11, 2023. [Doc. 199].

8. Plaintiff's 5-day extension will not unfairly prejudice Mr. Beers or the other defendants, will not impact any aspect of the proceedings, and the movant has acted in good faith in prosecuting Plaintiff's claims throughout these proceedings, discovering the error promptly, and swiftly taking steps to address the oversight by filing this motion and tendering Plaintiff's response to Mr. Beers' motion for summary judgment. *See Salts v. Epps*, 676 F.3d 468, 474 (5th Cir. 2012).

9. Undersigned counsel apologizes to the Court and opposing counsel for the inconvenience caused by counsels' oversight.

10. This motion is not made solely for delay, but only in the interest of justice.

CONCLUSION AND PRAYER

11. For the foregoing reasons, Plaintiff Lewis Brisbois, Bisgaard & Smith LLP moves the Court, under FED. R. CIV. P. 6, to extend the time 5 days until December 15, 2023 to file and serve Plaintiff's response to Defendant Bradley Beers' motion for summary judgment filed as an exhibit to this motion.

Dated: December 15, 2023

Respectfully submitted,

Lewis Brisbois Bisgaard & Smith LLP

/s/Bennett G. Fisher

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Attorneys for Plaintiff,

Lewis Brisbois Bisgaard & Smith, LLP

Certificate of Service

I certify a true and correct copy of the foregoing document has been served on all parties and counsel *of record* by electronic filing on December 15, 2023

/s/ Bennett G. Fisher

Bennett G. Fisher